Supreme Court, U.S.
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No. 05-

IN THE

Supreme Court of the United States

BRUCE EDWARD COMMITTE,

Petitioner,

v.

THE FLORIDA BAR,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether an attorney has filed frivolous pleadings and abused the legal process when he filed pleadings which, in cases of first impression, claimed that:

A. The "stop communications" provision of 15 U.S.C. § 1692c(c), when invoked, entitles a consumer debtor to be free from having to submit to a deposition to be conducted by an attorney debt collector.

B. An attorney debt collector violates 15 U.S.C. § 1692c(b) (no communications to third parties) when, after being served a demand to "stop communications," he serves on an adult consumer debtor's father written notice of taking the debtor's deposition in aid of execution of the post-judgment debt owed by the debtor.

C. An attorney debt collector violates 15 U.S.C. § 1692c(c) (stop communications with the debtor) when he commences settlement talks with the consumer debtor after having received from the debtor a written demand to "stop communications" with him; and

D. An attorney debt collector violates 15 U.S.C. § 1692e (making false, deceptive, or misleading representations) when he continues to attempt to collect a consumer debt from the debtor after the principal who hired the debt collector sells the debt to another and thus the collector no longer is authorized by the principal to collect the debt.

II. Whether the Florida Bar denied an attorney due process of law when it prosecuted him for alleged ethical breaches pursuant to a Bar complaint that fails to state any connection between the conduct alleged in one part of the complaint and the rules of professional conduct allegedly breached and cited only by number and title at the end of the complaint.

III. Whether The Florida Bar denied an attorney due process of law when, in prosecuting him for alleged ethical breaches (1) the Florida Bar never sought sanctions in its complaint nor argued for any at the refereed hearing, (2) the referee failed to stated the factual basis for the sanctions he recommended to the Florida Supreme Court, and (3) the referee never held a sanctions hearing where the facts required to be proved for the sanction recommended and eventually imposed could be established or argued by the attorney being prosecuted.

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Petitioner respectfully petitions for a writ of certiorari to review the judgment of the Florida Supreme Court in this case.

OPINION BELOW

The Order of the Supreme Court of Florida from which this appeal is sought is reported at 916 So.2d 741 (Fla 2005) and is reported in Petitioner's Appendix at Pet. App. 1a. The Statement of Facts and Conclusion of Law of the Referee is not reported but is reprinted in Petitioner's Appendix at Pet. App. 19a.

JURISDICTION

The Supreme Court of Florida filed its initial decision on 12 October 2005 (Pet. App. 1a) and its decision denying Petitioner's motion for rehearing on 6 December 2005 (Pet. App. 29a). This Court has jurisdiction under 28 U.S.C. § 1257 because Petitioner is seeking review of a final judgment of the Florida Supreme Court regarding Petitioner's claims based on rights, privileges, and immunities granted to him and others by the due process clause of the 14th Amendment to the U.S. Constitution (Pet. App. 31a) and by the U.S. Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692, *et seq.* (Pet. App. 32a-33a).

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

The provisions of the relevant sections of the U.S. Constitution, U.S. Statutes, and Florida Statutes are reproduced in Appendix D at Pet. App. 31a-33a and are the following: Fourteenth Amendment to the U.S. Constitution, due process clause (Pet. App. 31a), Article VI, clause 2 (supremacy clause) of the U.S. Constitution (Pet. App. 31a); the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692c(b), (c), (d), (e), k(a)(3), and n (Pet. App. 31a-33a); and the Florida Consumer Collection Practices Act (FCCPA), Fla. Stat. 559.72(7), clause

2 (before 1 July 2001) and 559.77 (before 1 July 2001) (Pet. App. 35a).

STATEMENT OF THE CASE

Petitioner is an attorney with trial and appellate practice experience employing the protections afforded consumer debtors by the federal Fair Debt Collection Practices Act (15 U.S.C. §§ 1692, *et seq.*) (Pet. App. 31a-33a) and its Florida counterpart the Florida Consumer Collection Practices Act (FCCPA) (before 1 July 2001) (Pet. App. 35a). In all such cases Petitioner has represented the consumer. In one such case, Petitioner successfully represented a putative representative party in a FCCPA class action prior to it being certified in state court. *Whigum v. Heilig Meyers*, 682 So.2d 643 (Fla App. 1 DCA 1996). After losing a dismissal motion filed by the opposing party, Petitioner, on behalf of his client, appealed and won on issues of first impression in Florida and set a precedent which benefited consumer debtors.[1]

Regarding the Florida Supreme Court judgment now at bar, Petitioner used his knowledge of, and practice experience in, these debt collection laws to bring, in county court and then U.S. District Court, cases of first impression under various sections of the FDCPA all with respect to the practices of an

1. This case was one of first impression in Florida. By winning the case, Petitioner established for the entire state of Florida the rule that the individual creditors' claims for the consumer debt underlying each of the class members claims were permissive, rather than compulsory, counter-claims, and thus they could be separated from the class action. The creditor would have to pursue any such counterclaims in separately filed actions, just as it could have prior to the class action ever being filed. More importantly, the myriad of possible individual counterclaims would not prevent the class action from being certified due to non-manageablity by the court. Florida Supreme Court Justice Kenneth Bell, who was one of seven justices deciding the case which is the object of this petition for writ of certiorari, was the trial judge overturned in the Whigum case appeal to the Florida First Circuit Court of Appeal.

attorney debt collector, Stephen M. Guttmann ("the collector"). Guttmann previously had appeared on the defendant side of FDCPA and FCCPA cases in which Petitioner represented the Plaintiff. The two cases are: (1) *Security Pacific Executive/ Professional Services v. Bruce Committe*, In the County Court In and For Escambia County, Florida, CASE No. 94-215-CC-12, Div. II. (unpublished) and (2) *Bruce Edward Committe v. Stephen M. Guttmann*, In the United States District Court for the Northern District of Florida, Pensacola, Division, Case No. 3:99cv426/RV (unpublished). The latter case was appealed to, and affirmed by, the U.S. Court of Appeals for the Eleventh Circuit, Case No 02-11688 (it too is unpublished[2] but referenced at 62 Fed. Appx 317 (Table).

I. Petitioner's Conduct In County Court

In county court, Petitioner first used the "stop communication" language of 15 U.S.C. § 1692c(c) in a motion for a protective order in an attempt to prevent the collector from taking Petitioner's deposition in aid of execution of a consumer debt money judgment outstanding against him. This invocation of 1692c(c) for this purpose was a case of first impression in all places where the United States courts have jurisdiction. The county court ruled against Petitioner and denied the motion, holding that the FDCPA did not apply to attorneys engaged in litigation activities.

But the court made its decision apparently unaware of the U.S. Supreme Court's *Heintz v. Jenkins*, 514 U.S. 291, 115 S. Ct. 1489, 131 L. Ed. 2d 395 (1995) decision which held directly that the FDCPA does apply to attorney debt collectors engaged in litigation activities. The county court had in error relied upon *Green v. Hocking*, 9 F.3d 18 (6th Cir. 1993) (per curiam) which had been overturned by the *Heintz* decision.

2. By court rule, unpublished opinions in the Eleventh Circuit are not binding but are persuasive when the opinion is attached to the brief or other paper making reference to it. Eleventh Circuit Court Rules, Rule 36-2.